

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X
TIME INC., HEARST CORPORATION, ADVANCE	:
MAGAZINE PUBLISHERS INC., AMERICAN	:
MEDIA, INC., HACHETTE FILIPACCHI MEDIA	:
U.S., INC., THE MCGRAW-HILL COMPANIES,	:
INC., NEWSWEEK, INC., SOURCE INTERLINK	:
MAGAZINES, LLC, REED BUSINESS	:
INFORMATION, A DIVISION OF REED	:
ELSEVIER INC., VARIETY, INC., REED	:
ELSEVIER PROPERTIES INC., BONNIER	:
CORPORATION, ZIFF DAVIS PUBLISHING	:
HOLDINGS INC., FORBES LLC, REIMAN MEDIA	:
GROUP, INC., RD LARGE EDITION, INC., HOME	:
SERVICE PUBLICATIONS, INC. and READER'S	:
DIGEST LATINOAMERICA SA,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
DARREN ANDREW BUDD, SALVEO LIMITED,	:
CYBERNET COMMUNICATIONS, INC.,	:
SWITCHWORKS TECHNOLOGIES, INC.;	:
HAMIDULLA GHUMAL ABBAS, YOAV	:
SCHWARTZ, RICK ROSS and JOHN DOES 1-20,	:
	:
Defendants.	:
-----	X

08 Civ. 7392 (WHP)  
ECF CASE

**DECLARATION OF JEREMY POMEROY  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, JEREMY POMEROY, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Vice President and Associate General Counsel of Reed Business Information ("RBI"), a division of Reed Elsevier Inc., and Associate General Counsel of Variety Inc. ("Variety"; and, collectively with RBI, "Company"), two of the plaintiffs in the within infringement action. I am fully familiar with the facts stated herein. I submit this

declaration in support of plaintiffs' motion for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd ("Budd"), Salveo Limited ("Salveo"), Cybernet Communications, Inc. ("Cybernet"), Switchworks Technologies, Inc. ("Switchworks"), Hamidulla Ghumal Abbas ("Abbas"), Yoav Schwartz ("Schwartz"), Rick Ross ("Ross") and John Does 1-20 (collectively, "defendants") from infringing plaintiffs' copyrights, trademarks and trade dress.

2. RBI is a division of Reed Elsevier Inc., a Massachusetts corporation with a principal place of business at 360 Park Avenue South, New York, NY 10010-1710. Variety is a New York corporation with a principal place of business at 5700 Wilshire Boulevard, Los Angeles, CA 90036.

3. Company owns and publishes many well known magazines, including: *Variety* and *Interior Design*. *Variety* and *Interior Design* magazines are both distributed throughout the United States (including in New York), Canada, and dozens of other countries throughout the world.

4. Company's practice with regard to obtaining copyright on these magazines generally is to submit publications for group registration with the United States Copyright Office on a regular basis.

5. The purpose of this declaration is to set forth factual information and exhibits relevant to this injunction motion.

#### **Mygazines.com Is Infringing Company's Copyrights and Trademarks**

6. I first became aware of the Mygazines.com website on or about July 23, 2008, at which time the website appeared to be fully populated with uniform, high-

quality magazines. Without Company's knowledge, consent or authorization, Mygazines.com was displaying full text reproductions of numerous magazines owned and published by Company.

7. Specifically, the full text of the following magazines owned and published by Company are among those being displayed by defendants on the Mygazines.com website without our consent:

(a) *Interior Design*, Volume 76, No. 8 (June 2005). Company obtained Copyright Registration No. TX 6-202-571 for this issue on July 15, 2005. A copy of the copyright registration certificate is annexed hereto as part of Exhibit A.

(b) *Variety*, Volume 411, No. 7 (June 30-July 13, 2008). Company has obtained a Copyright Registration No. TX 6-648-129 for this issue on August 8, 2008. A copy of the certificate of registration is annexed hereto as part of Exhibit A.

(c) *Variety*, Volume 411, No. 9 (July 21-July 27, 2008). Company has not yet applied for registration of its copyright in this issue because it was published very recently, but intends to do so.

(d) *Interior Design*, Volume 79, No. 7 (May 2008). Company has applied to the Copyright Office for registration of this issue and expects for the application to be approved by the Copyright Office in due course. A copy of the application for registration is annexed hereto as part of Exhibit B.

(e) *Interior Design*, Volume 79, No. 8 (June 2008). Company has applied to the Copyright Office for registration of this issue and expects for the application

to be approved by the Copyright Office in due course. A copy of the application for registration is annexed hereto as part of Exhibit B.

8. Company is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Company's products.

9. In addition, Company has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. Mygazines.com displays the cover of issues of *Variety* and *Interior Design* magazine on the website, infringing Company's trade dress in those covers.

10. Company has not authorized or licensed defendants to post any content or trademarks from its magazines on the Mygazines.com website

11. Indeed, Company operates a website for each of its titles, and offers some of the content available in the print editions of its magazines through those sites. Company earns revenue from its websites by, among other things, offering advertising space to advertisers in conjunction with Company's content. By offering the same content to consumers on its site, for free, Mygazines.com directly competes with Company's websites.

12. Company also offers a digital edition of *Variety* magazine, produced by Olive Software, Inc., in much the same format as that offered by Mygazines.com. This digital edition is made available by Company solely to paying subscribers who visit its

website. For this reason, Mygazines.com also competes directly with Company's digital publication.

**Company Gave Defendants Notice of Their Infringing Activity**

13. On July 24, 2008, on behalf of Company, we wrote to defendant Salveo, the registered owner of Mygazines.com, at the address listed on its domain registration and its email address, demanding that it cease and desist from providing works of Company or its affiliates to the public, in any form. Company did not receive any response from Salveo.

14. On July 24, 2008, we wrote to defendant Cybernet at the address listed on its website, and to its email address, demanding that it immediately cease and desist from making any content or trademarks associated with *Variety* magazine available on Mygazines.com. Company did not receive any response from Cybernet.

**Defendants' Conduct is Causing Company Irreparable Harm**

15. This application is brought on by way of Order To Show Cause because expedited relief is necessary due to the irreparable harm Company is suffering and will suffer from defendants' continued infringement of Company's copyrights, trademarks and trade dress.

16. Defendants are engaging in wholesale theft and infringement of some of our Company's most valuable intellectual property. They are doing so blatantly, willfully and unrepentantly. *Variety* magazine, almost universally recognized as the bible of the entertainment industry, has developed global fame and goodwill over more than a century of

publishing under the “Variety” name. It is distributed in print in approximately 68 countries throughout the world and reaches thousands of additional readers through its website, Variety.com. *Interior Design* has, over more than 50 years of publishing, garnered worldwide recognition as a leading source of information for the interior design industry. It is distributed in print in approximately 81 countries throughout the world and reaches thousands of additional readers through its website, InteriorDesign.net. Intrinsic to the value and reputation of this magazine in the design community is Company’s insistence on the highest quality of visual presentation, a value that is undermined by the substandard manner and context in which Defendants are displaying it. Our magazines are the product of the creative vision and hard work of scores of professionals, and require the investment of substantial sums of money. The success of our Company, and the livelihoods of numerous employees, depend on being able to reap the benefits of this hard work and investment. Defendants, with no creative or monetary investment at all in producing the magazines, have been unapologetically appropriating and distributing them for their own ends, in defiance of numerous demands to respect our intellectual property rights and cease making our magazines available on their website. Defendants’ egregious conduct is causing irreparable damage to our goodwill, loss of market share and loss of subscription and advertising revenues.

**WHEREFORE**, for the foregoing reasons, together with those set forth in the accompanying summons and complaint, declaration of plaintiffs, and memorandum of law, your deponent respectfully prays for a temporary restraining order and preliminary injunction enjoining and restraining defendants from distributing or displaying Company's magazines, and from inducing and encouraging its users to upload our content.

Dated: August 18, 2008


  
\_\_\_\_\_  
**Jeremy Pomeroy, Esq.**  
Vice President & Associate General Counsel,  
Reed Business Information,  
a division of Reed Elsevier Inc.  
Associate General Counsel, Variety Inc.

Exhibit A  
To  
Declaration of Jeremy Pomeroy



# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*  
Register of Copyrights, United States of America



## Short Form SE

For a Serial  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 6-202-571



Effective Date of Registration

*July 15 2005*

Application Received  
**JUL 15 2005**

Deposit Received

One

Two

Fee Received

**JUL 15 2005**

Examined By

*[Signature]*

Correspondence

DO NOT WRITE ABOVE THIS LINE.

1

TITLE OF THIS SERIAL AS IT APPEARS ON THE COPY

Interior Design

Volume▼  
76

Number▼  
8

Date on copies▼  
June 2005

ISSN▼  
0020-5508

2

NAME AND ADDRESS OF THE AUTHOR AND COPYRIGHT CLAIMANT IN THIS COLLECTIVE WORK MADE FOR HIRE

Reed Business Information  
2000 Clearwater Drive  
Oak Brook, IL 60523

3

DATE OF PUBLICATION OF THIS PARTICULAR ISSUE

Month▼

Day▼

Year▼

June

1st

2005

YEAR IN WHICH CREATION OF  
THIS SERIAL WAS COMPLETED (IF  
EARLIER THAN THE YEAR OF  
PUBLICATION):

Year▶ 2005

**CERTIFICATION:** I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the work identified in this application, that all the conditions specified in the instructions on the back of this form are met, that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature (X)

*Nicole Port*

Typed or printed name of signer

Nicole Port

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name▶ Nicole Port, Billing Center Manager

Address (if other than given below)▶

Daytime phone▶ (630) 288-8439

Fax▶ (630) 288-8437

Email▶ nicole.port@reedbusiness.com

DEPOSIT ACCOUNT

Account number▶ DA022500

Name of account▶

Reed Business Information

Certificate will be mailed in window envelope to this address:

Name▼

Nicole Port of Reed Business Information a division of Reed Elsevier, Inc.

Number/Street/Apt▼

2000 Clearwater Drive

City/State/ZIP▼

Oak Brook, IL 60523

### YOU MUST:

- Complete all necessary spaces
- Sign your application

### SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable \$30 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

### MAIL TO:

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

Fees are subject to change. For current fees, check the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), write the Copyright Office, or call (202) 707-3000

17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

**C Form SE/Group**  
UNITED STATES COPYRIGHT OFFICE

TX 6-648-129



*August 8, 2008*  
APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

EXAMINED BY *[Signature]* CORRESPONDENCE ☐

DO NOT WRITE ABOVE THIS LINE.

1

List  
in order of  
publication

No  
previous  
registration  
under  
identical  
title

TITLE ▼

Variety

ISSN ▼

0042-2738

	Volume ▼	Number ▼	Issue date on copies ▼	Month, day, and year of publication ▼
1.	411	3	June 2-8, 2008	June 2, 2008
2.	411	4	June 9-15, 2008	June 9, 2008
3.	411	5	June 16-22, 2008	June 16, 2008
4.	411	6	June 23-29, 2008	June 23, 2008
5.	411	7	June 30-July 13, 2008	June 30, 2008
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				

2

NAME AND ADDRESS OF THE AUTHOR/COPYRIGHT CLAIMANT IN THESE COLLECTIVE WORKS MADE FOR HIRE ▼

Reed Business Information  
2000 Clearwater Drive/Oak Brook, IL 60523

FOR NON-U.S. WORKS: Author's citizenship ▼

Domicle ▼

Nation of publication ▼

**CERTIFICATION:** I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the works identified in this application, that all the conditions specified in the instructions on the back of this form are met, that I have deposited two complimentary subscription copies with the Library of Congress, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten  
signature (X) *[Signature]*

Typed or  
printed name Jeremy Pomeroy

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name Jeremy Pomeroy

Daytime telephone 646-232-4700

Address (if other than given below) \_\_\_\_\_

Fax 303-263-2431

Email jpomeroy@reedbusiness.com

Certificate  
will be  
mailed  
in window  
envelope  
to this  
address:

Name ▼

Reed Business Information, Attn: Jeremy Pomeroy, Esq.

Number/Street/Apt ▼

360 Park Avenue South, 18th floor

City/State/Zip ▼

New York, NY 10010-1710

DEPOSIT ACCOUNT

Account number DA022500

Name of account \_\_\_\_\_

Reed Business Information

MAIL TO  
Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20558-6000

\*17 USC §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Exhibit B  
To  
Declaration of Jeremy Pomeroy

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), write the Copyright Office, or call (202) 707-3000.

**Short Form SE**  
For a Serial  
UNITED STATES COPYRIGHT OFFICE  
REGISTRATION NUMBER

Effective Date of Registration

Examined By

Application Received

Correspondence ☐

Deposit Received  
One

Two

Fee Received

DO NOT WRITE ABOVE THIS LINE.

1

TITLE OF THIS SERIAL AS IT APPEARS ON THE COPY

Interior Design (+) Interior Design Market Tableoid

Volume▼  
79

Number▼  
7

Date on copies▼  
May 2008

ISSN▼  
0020-5508

2

NAME AND ADDRESS OF THE AUTHOR AND COPYRIGHT CLAIMANT IN THIS COLLECTIVE WORK MADE FOR HIRE

Reed Business Information  
2000 Clearwater Drive  
Oak Brook, IL 60523

3

DATE OF PUBLICATION OF THIS PARTICULAR ISSUE  
Month▼ Day▼ Year▼

May

1st

2008

YEAR IN WHICH CREATION OF  
THIS ISSUE WAS COMPLETED (IF  
EARLIER THAN THE YEAR OF  
PUBLICATION)  
Year▶ 2008

**CERTIFICATION:** I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the work identified in this application, that all the conditions specified in the instructions on the back of this form are met, that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature *Nicole Adams*

Typed or printed name of signer Nicole Adams

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name▶ Nicole Adams

Address (if other than given below)▶ 2000 Clearwater Drive, Oak Brook, IL 60523

Daytime phone▶ (630) 288-8439

Fax▶ (303) 265-5508

Email▶ nicole.adams@reedbusiness.com

DEPOSIT ACCOUNT

Account number▶ DA022500

Name of account▶

Reed Business Information

Certificate will be mailed in window envelope to this address:

Name▼

Reed Business Information - Attn: Nicole Adams

Number/Street/Apt▼

2000 Clearwater Drive

City/State/Zip▼

Oak Brook, IL 60523

**YOU MUST:**

- Complete all necessary spaces
- Sign your application
- SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:**
  1. Application form
  2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
  3. Deposit material

**MAIL TO:**

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Copyright Office  
101 Independence Avenue SE  
Washington, DC 20550-8000

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UNITED STATES COPYRIGHT OFFICE  
REGISTRATION NUMBER

Effective Date of Registration

Examined By

Application Received

Correspondence ☐

Deposit Received  
One Two

Fee Received

DO NOT WRITE ABOVE THIS LINE.

1

TITLE OF THIS SERIAL AS IT APPEARS ON THE COPY  
Interior Design & NeoCon World's Trade Fair 2008

Volume▼ 79 Number▼ 8 Date on copies▼ June 2008 ISSN▼ 0020-5508

2

NAME AND ADDRESS OF THE AUTHOR AND COPYRIGHT CLAIMANT IN THIS COLLECTIVE WORK MADE FOR HIRE  
Reed Business Information  
2000 Clearwater Drive  
Oak Brook, IL 60523

3

DATE OF PUBLICATION OF THIS PARTICULAR ISSUE  
Month▼ June Day▼ 1st Year▼ 2008  
YEAR IN WHICH CREATION OF THIS ISSUE WAS COMPLETED (IF EARLIER THAN THE YEAR OF PUBLICATION):  
Year▶ 2008

**CERTIFICATION:** I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the work identified in this application, that all the conditions specified in the instructions on the back of this form are met, that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature *Nicole Adams*

Typed or printed name of signer Nicole Adams

**PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM**

Name▶ Nicole Adams

Address (if other than given below)▶ 2000 Clearwater Drive, Oak Brook, IL 60523

Daytime phone▶ (630) 288-8439

Fax▶ (303) 265-5508

Email▶ nicole.adams@reedbusiness.com

**DEPOSIT ACCOUNT**

Account number▶ DA022500

Name of account▶

Reed Business Information

Certificate will be mailed in window envelope to this address:

Name▼  
Reed Business Information - Attn: Nicole Adams  
Number/Street/Apt▼  
2000 Clearwater Drive  
City/State/Zip▼  
Oak Brook, IL 60523

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• Sign your application  
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2. Nonrefundable filing fee in check or money order payable to Register of Copyrights  
3. Deposit material  
**MAIL TO:**  
Library of Congress  
Copyright Office  
101 Independence Avenue SE  
Washington, DC 20540-6000

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